UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:09-CR-216-FL-7

UNITED STATES OF AMERICA

v.

MOHAMMAD OMAR ALY HASSAN,
Defendant.

DEFENDANT HASSAN'S SENTENCING MEMORANDUM AND REQUEST FOR DOWNWARD DEPARTURE AND DOWNWARD VARIANCE

NOW COMES Defendant, Omar Hassan, by and through undersigned counsel, and submits the following Sentencing Memorandum pursuant to U.S.S.G. § 4A1.3, 18 U.S.C. § 3553(a) and consistent with *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005), *United States v. Rita*, 127 S. Ct. 2456, 168 L. Ed. 2d 203 (2007) and *Gall v. United States*, 128 S. Ct. 586, 169 L. Ed. 2d 445 (2007). We respectfully request that the Court also consider, in determining the appropriate sentence for Hassan, the factors listed in this memorandum, which are consistent with the factors which are required to be considered under 18 U.S.C. § 3553(a). Omar Hassan requests that the Court downwardly depart pursuant to U.S.S.G. § 4A1.3 in that the Defendant's criminal history category significantly overstates the seriousness of his criminal record. We request that in addition to sustaining the previously filed

Objections[1], the Court grant a downward variance so that Hassan's sentence is not greater than necessary.[2]

I. STATEMENT OF CASE AND FACTS

Omar Hassan stands convicted of 18 U.S.C. § 2339A, conspiracy to provide material support to terrorists. After the more than four week jury trial, Hassan was acquitted of conspiracy to murder, kidnap, maim, and injure persons in a foreign country, in violation of 18 U.S.C. § 956(a). Hassan has been detained since his arrest on July 27, 2009.

II. LEGAL ARGUMENT

A downward departure pursuant to U.S.S.G. § 4A1.3 is appropriate as Hassan's criminal history categories of III or VI both overstate the seriousness of his criminal history. The Court should also grant Hassan's request for a downward variance because the advisory guideline range suggested in the PSR is greater than necessary to accomplish the goals of sentencing. Federal law states that the "court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection." 18 U.S.C § 3553(a). Lastly, after the requisite consideration of all the factors listed in 18 U.S.C. § 3553(a)(2), this court should grant Hassan a downward variance because a sentence significantly below the statutory maximum would be a sufficient, but not greater than necessary, sentence.

A. PURSUANT TO 18 U.S.C. § 3553(a), THIS COURT SHOULD GRANT HASSAN'S REQUEST FOR DOWNWARD VARIANCE

Courts are now required to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes of [sentencing]." 18 U.S.C. § 3553(a). After the Supreme Court announced its ruling in *Gall*, district courts are required to consider all of the 18 U.S.C. § 3553

[1] Hassan requested that the Probation Office tender the formal Objections submitted by Counsel (in letters dated December 28, 2011 and January 5, 2011. Undersigned counsel believes this are docketed at 1609, with Objections #1 through 3.

[2] Counsel for Hassan has tendered approximately 100 character letters to the Court on his behalf.

factors in determining whether they support the sentence requested by a defendant. In its review of those factors, a district court may not presume that the Guideline range is reasonable. *Gall*, 128 S. Ct. at 596-97, 169 L. Ed. 2d at 456-57. Additionally, district court judges must now consider and respond to nonfrivolous arguments that the Guideline sentence itself reflects an unsound judgment because it "fails properly to reflect § 3553(a) considerations," does not "treat certain defendant characteristics in the proper way," or that "the case warrants a different sentence regardless." *Rita*, 127 S. Ct. at 2465, 2468, 168 L. Ed. 2d at 214, 218. *See also United States v. Blount*, 284 Fed. Appx. 1 (4th Cir. 2008) (where the Fourth Circuit announced that a sentencing court may grant a downward variance based solely on its determination that the guidelines sentence is too severe).

In *United States v. Curry*, the Fourth Circuit affirmed the district court's departure from the Guidelines under 18 U.S.C. § 3553(a) because of the defendant's restitution efforts (sentencing him to five (5) months less than the minimum). The Court held:

> [T]he Guidelines should be the starting point and the initial benchmark. The Guidelines are not the only consideration, however. Accordingly, after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by the party. In so doing, he may not presume that the Guidelines range is reasonable. He must make an individualized assessment based on the facts presented. If he decides that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance. We find it uncontroversial that a major departure should be supported by a more significant justification than a minor one. After settling on the appropriate sentence, he must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing.

United States v. Curry, 523 F.3d 436, 440 (4th Cir. 2008) (citing *Gall*, 128 S. Ct. at 596-97).

The court goes on to say,

> 'The sentencing judge is in a superior position to find facts and judge their import under § 3553(a) in the individual case. The judge sees and hears the evidence, makes credibility determinations, has full knowledge of the facts and gains insights not conveyed by the record.'

Id. at 441 (citing *Gall*, 128 S. Ct. at 597). After considering all the below factors applicable to this case, the Court should grant Hassan a downward variance and fashion a sentence below the statutory maximum that accomplishes the goals of sentencing.

1. Criminal History Categories of III or VI Overstate the Seriousness of Hassan's Criminal History (U.S.S.G. § 4A1.3)

Omar Hassan submits that U.S.S.G. § 4A1.3 policy statement is applicable in this case and that the Criminal History of Category VI and even a Criminal History of Category III overstates the seriousness Of Omar Hassan's criminal record. The court may depart downward when "a defendant's criminal history category significantly over-represents the seriousness" of a defendant's criminal record. *Id.* (See also *U.S. v. Summers*, 893 F.2d 63 (4th Cir. 1990) (a series of minor offenses resulted in overstating defendant's criminal history) and *U.S. v. Mishoe*, 241 F.3d 214 (2d Cir. 2001) ("street level" drug sellers might be appropriate, if the departure is based on individualized consideration of each defendant's case; consideration of the amount of drugs involved in the defendant's prior offenses, his role in those offenses, the sentences previously imposed, and the amount of time previously served.)

We respectfully incorporate by reference the affidavit of Karl Knudsen. Mr. Knudsen provides the details of each of the prior convictions set forth in the Presentence Report. The original charges as well as the ultimate misdemeanor pleas overstate both Hassan's participation in criminal activity outside the scope of the indictment as well as the seriousness of the conduct. Likewise, as set forth in the prior summary of trial testimony and as set forth in other sections of this Memorandum, a criminal History Category of VI significantly overstates the seriousness of

Hassan's alleged participation in the Daniel Boyd conspiracy. Accordingly, we request that the Court downwardly depart from the Sentencing Guidelines range by reducing the criminal history to a more appropriate level.

2. The Nature and Circumstances of Hassan's Offense: Hassan is a Small Part and Minimal Participant of a Much Larger Conspiracy (18 U.S.C. § 3553(a)(1)).[3]

This Court has presided over nearly every detail of this case for more than two and a half years and presided over the four week trial. Rather than repeat the previous arguments and information submitted, Hassan incorporates by reference the summary of the trial testimony as outline in Hassan previously filed Rule 29 and Rule 33 Motion (D.E. # 1547) and Hassan's objections to the PSR. However, there are several factors crucial to this sentencing and must be highlighted for the Court. The jury acquitted Hassan of Count Two of the Second Superceding Indictment (conspiracy to murder, kidnap, maim, and injure persons in a foreign country). Most importantly, contrary to the position of the Government, this acquittal is legally significant to the task before this Court. The PSR states on more than one occasion that Hassan "traveled to Israel and Jordan in 2007 to engage in jihad and find a way to battlefront." Had the jury believed that, presumably they would have convicted Omar of conspiracy to murder, kidnap, maim, and injure persons in a foreign country. That is exactly what "engaging in jihad and finding a way to the battlefront" would (potentially) have accomplished. That statement flies in the face of the jury verdict in this case.

Hassan did not know co-Defendants Sherifi and Subasic. Hassan had no relationship with the three informants who testified at trial. Hassan was not on the more than 750 hours or

[3] Rather than repeat prior information provided to the Court, Hassan incorporates herein his objections to the PSR and his legal arguments submitted to Probation related to the terrorism enhancement and minimal role in the offense. Hassan respectfully submits that information should be considered when evaluating the nature and circumstances of the offense conduct.

audio[4] and video surveillance obtained by the Government (and the hours presented to the jury at trial). Omar's link to this group was through his friend, Ziyad Yaghi. Yaghi introduced Omar to Daniel Boyd. After the Summer of 2007, Daniel Boyd testified he only saw Omar one time and their exchange was brief. Omar not participate in training exercises with the Boyds or co-conspirators in Caswell County or elsewhere. Omar did not raise money or contribute money to any efforts related to Daniel Boyd. Each and every witness that testified at trial for the Government stated that they did not have an agreement with Omar to conspire to provide material support to terrorists and/or conspire to murder, kidnap, maim, and injure persons in a foreign country. The PSR does not take the trial testimony into consideration nor does it make references to the evidence tendered by the Government. The jury was better positioned to make such a determination because the jurors heard all the testimony and viewed all of the evidence presented by the Government. Therefore, the offense conduct in the PSR grossly overstates Hassan's involvement in this conspiracy because it fails to take into consideration the specific facts related to Hassan's actions. It is without question that Omar Hassan was at most a very small player in a much larger conspiracy and absolutely the least involved for the shortest period of time of the multiple co-Defendants in this case. The Court should take this into consideration when fashioning the most appropriate sentence and grant Hassan a downward variance based in part because of his minimal and limited participation.

3. History and Characteristics of Hassan (18 U.S.C. § 3553(a)(1)).

The second part of the first factor listed in 18 U.S.C. § 3553(a) is "the history and characteristics of the defendant." This Court has learned of Omar's actions related to this case. But this case is a small window into Omar's character, his life and his future. It is the Court's

[4] The Government did present audiotapes of jail phone calls after Hassan was already arrested, but those audiotapes were discussions with any co-conspirators or in furtherance of the conspiracy.

responsibility to consider the totality of an individual and his future prospects when fashioning the most appropriate sentence.

If one could separate this current offense from Omar's entire life, Omar was very much an average young adult. Hagar Abdel-Baky, a childhood friend of Omar's, lightheartedly noted,

> He has always been known as the boy with a smile on his face. Whenever you would see him, he would never greet you without a big smile on his face. Even when he would get in trouble in class he would still be sitting in the corner smiling. His smile was contagious.

Omar attended Al-Iman Islamic School in Raleigh as a younger boy. While at Cary High School, Omar was on the wrestling team which won a state championship. Omar attended North Carolina University seeking a bachelors degree. Omar majored in sociology and psychology and had a GPA just under a 3.0. He was commitment to obtaining his undergraduate degree. That remains a goal of his and he has plans to finish his degree once this matter is behind him.

Omar has a tremendous family. The character letters showcase the role his family plays in his life and his importance to the Hassan family. Sahar El Shafie, a longtime member of the Raleigh community, writes that Omar is "the progeny of a hard working immigrant family with good ties to the local Islamic community." Having been born in New Jersey, Omar was the first child born to his parents and first generation born American. The family relocated South and Omar and his two younger sisters enjoyed a supportive and safe upbringing in the Raleigh area. The role of males in the Islamic faith and Muslim culture is tremendous. Their gender alone places significant expectations and burden on men to provide for their (even extended) family and protect their female family members. Omar is his parents' eldest child and only son. As Omar's parents wrote, "As our only son, he had many obligations to fulfill … The eldest son is responsible to assist the family in every way possible …" Omar's sister Sarra adds, "He always put my safety ahead of his and he was always extremely kind and generous .. Omar was and still is my number one supporter. Omar's absence has been extremely difficult on me and my family. Everyday is a struggle …" Omar's youngest sister sadly adds, "It is like a part of our life is missing. Life without him is dull and depressing." His absence from the home and their lives has been incredibly difficult and disappointing for more than two years now. It is part of Omar's faith to support them. He desires to return home and fulfill his role within his family unit. With that being said, his family's love and support has been unwaivering and nothing short of tremendous through this ordeal. They have made an appearance at every court proceeding; they have assisted with his defense to the exist they could; and they have faithfully tracked up and down the highways to visit him as he has been incarcerated for these two and a half years. They will provide him a home and a network of support one he returns to ensure he has all the resources necessary to return to society and become a productive member of society.

Omar was a hard worker. Omar worked at UPS while he was in college. He balanced a nighttime work schedule so he could earn money while attending school. Additionally, Omar worked with his father in his car business. Omar would attend auctions with his father and help with the business that supported their family. Omar also has potential prospects in the car business with his father and that he could contribute tremendously to this area of work when given the chance to return. Omar also refereed in the CASL Soccer League, a local youth program. While this was a small income for him, Omar loved athletics and enjoyed being around children. This was a great way to stay physically active, support the youth and financially support himself. Hasona Elzeaitry, a referee for the Capital Area Soccer League, wrote to the Court,

> The more I worked and interacted with him, the more I saw how kind, well-mannered, and hardworking he truly is. During soccer games, he would always officiate fairly and without bias to anyone or any team. If anyone was injured during the game, he would be the first person by their side to make sure they were okay and to call for any help that was

> needed. He was also always a great listener and never made any sudden or harsh judgments.

The religious elements involved in this case are etched in every part of this prosecution. So much of the Islamic faith has been interpreted as violent and a charge to rise to terrositic violence. Suggestions that Omar would actually engage in terroristic activity are not correct. Omar practices the Islamic faith. Omar was raised attending the Islamic Association of Raleigh on a regular basis. His parents have always brought him up in the faith and it is a central part of their daily lives. The Hassans have described themselves as conservative Muslims. The women in their family dress in traditional attire and keep their heads covered. A "good" Muslim does not drink alcohol, does not use drugs and does not use profanity. It is frowned upon for young men and women to date and they do enjoy one another's company alone. Many times, these strict practices can come in conflict with the activities and vices in which youth engage. As set forth in the Presentence Report, Omar felt this same pressure. Omar respectfully request that the Court recommend participation in the intensive drug assessment and any treatment programs in the BOP. It is no excuse or justification for much of his behavior, but rather insight into the struggles he faced to remain steadfast in his religion, loyal his family, adherent to his values and at the same time be a teenager. Omar attended many of the youth functions at the IAR and gathered with the youth for events such as Friday night activities where they would talk, have dinner and play sports. Omar attended trips with the IAR, such as camping and paintballing. Prior to his arrest, Omar had become a youth counselor at the IAR. Additionally, the IAR holds an annual Quran contest where youth memorize and recite important parts of the Quran. Omar participated in the contest seven times: he received first place six times and third place on his seventh year. Imam Samel Asal wrote,

> I have seen Mohammad Omar also doing volunteer work at the community. … he showed love to our community at large, Muslims and non-Muslims. For example, we had an open house in July 2009 where we invited more than 600 of our non-Muslim neighbors to visit the Islamic Center of Raleigh and get to know their Muslim neighbors. I have seen Mohammad Omar volunteering in preparation for the event and setting the chairs and carpets for the open house very humbly and sincerely. I have seen him also volunteering in several other community events and activities like preparations for the new-born feasts.

While not legally married, Omar was "religiously married" to Sonya Zaghloul. Their relationship and marriage were not without controversy and these past two and half years have added to their already incredibly difficult relationship. Sonya has supported Omar from day one and is waiting for his release. They desire to have a legal and public ceremony and have plans for their future. The Court is familiar with this relationship and even the role some of their actions complicated this case. If the Court takes nothing else away, Omar hopes the Court recognizes the love he and Sonya share, even at times foolish and blind. All of their actions were not to obstruct justice or break the law, but to protect one another. Omar made a commitment to Sonya and asks that the Court consider this young and already damaged relationship when determining Omar's fate.

Much has been made about Omar's love of physical activity. The character letters provided to Court show just how many people know Omar's dedication and passion for sports, physical activity and staying in shape. Omar was a small child, not blessed to be tall or built well. After struggling to physically match up, Omar made a commitment to himself to change his physique. He did just that. Omar worked hard to develop muscle tone. He wrestled in high school. He played soccer. As he grew older, he developed a passion for Muay Thai boxing. It was challenging and physically draining; Omar excelled at it. He reached a level where he was participating in organized fights. Aside from his personal goals to be physically fit, strong physical health is at the core of the Islamic faith. Omar found a balance between his faith and his personal desires. Even during the past two and a half years of incarceration, Omar continues to be devoted to his physical health and to the best of his ability keeps a workout regime even in jail. Omar submits to the Court that none of his physical efforts were to train for terrorism or in support thereof. His efforts were to be mentally and physically fit and to remain steadfast in his religious convictions.

Omar was an average young man and average people makes mistakes. Mohamed Askar, a good friend of Omar's, wrote, "We always teased Omar by calling him 'slowmar' because he was often naïve and easily tricked." Omar is not without his indiscretions and as the PSR notes, Omar has a prior criminal history. Taken in context and in consideration of his age, his criminal history overstates the serious of those offenses. Hassan incorporates herein the arguments made in his objections to the PSR, and specifically the statements made by Karl Knudsen (in his two affidavits) and Sonya Zaghloul in her affidavit related to these prior convictions. Omar also highlights that he was 16 years old in his first brush with the law and 21 years old when he last was convicted. He was a juvenile during much of this time. His age must be considered when weighing the severity of these offenses. Omar respectfully requests this Court consider these factors, and those outlined in the PSR objections, when taking his criminal history into consideration.

One hundred character letters were submitted on behalf of Omar Hassan. The letters portray a life of a humble and compassionate young man who was trying to enjoy the life of a United States teenager while also seeing his own personal moral compass. Along the way he made mistakes, but the true Omar Hassan is a loving and gentle young man.

Gulalai Khan, a friend of Omar's wrote,

> On Hillsborough Street, there were always homeless people walking around and asking for money. Many people that I have witnessed would just pass by without helping them

> or looking at them as human beings. … He would give them food and would to talk to them … he would always remember their name and when he would see them again he would call them out by their names.

Hassan appreciates this Court's responsibility in fashioning the appropriate sentence in this matter and he hopes this Court will take into consideration all these facts.

4. A Sentence Below the Statutory Maximum will Provide Just Punishment, Adequate Deterrence, and Protection of the Public while Still Promoting Respect for the Law (18 U.S.C. § 3553(a)(2)).

The second factor listed in 18 U.S.C. § 3553(a) is

> the need for the sentence imposed –
> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
> (B) to afford adequate deterrence to criminal conduct;
> (C) to protect the public from further crimes of the defendant; and
> (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

Hassan has been incarcerated since July 27, 2009. That is nearly 30 months. All of this time has been spent in county jails. Since his trial, in mid-October, 2011, Omar has been on 23 hour a day lockdown. He is permitted one hour a day outside his cell. He is separated from the jail population. He is forced to wear a bright yellow jumpsuit because he is considered "high risk." As evident at Court, and continuing today, Omar is commonly shackeled, either at his ankles or his wrists. He is not allowed contact visits with his family and he has not been permitted to visit with his younger sister because she is under 18 years.

Omar has been labeled a terrorist. That is a stigma he struggles with daily and one he will carry for the rest of his life. As Omar Askar wrote in his letter, "I can't imagine the agony that his parents and family must feel to hear that their son and brother has been labeled a 'terrorist.'" No active sentence handed down by this Court will diminish this branding and how that will adversely affect his life forever. In many regards, he will punished for the rest of his life.

Omar has no plans to return to a life of criminal behavior when he is released. He has big dreams for his school, his career and his family. While his period of incarceration has been unfortunate, he has had much time to reflect on his actions, his words, his associations and responsibilities. While at the time, much of it did not seem wrong, he now sees where he made mistakes and where he can improve. He also misses things like dinner with his family, time to talk with Sonya and privacy. Those events matter more than him now than Facebook, political debates and reckless fun. While he disagrees tremendously with many things in this case, he can now better see why he is before this Court and how to never return.

The Sentencing Reform Act "precludes federal courts from imposing or lengthening a prison term in order to promote a criminal defendant's rehabilitation." *Tapia v. U.S.*, 131 S.Ct. 2382 (2011). While this Court may impose an additional active sentence, Omar submits that a sentence considerably below the statutory maximum is justified in order to accomplish the goals of sentencing.

5. A Downward Variance is Required to Avoid Unwarranted Sentence Disparities (18 U.S.C. § 3553(a)(6)).

In order to avoid unwarranted sentence disparities, the Court should take into consideration the sentences previously handed down to co-Defendants Dylan Boyd and Zak Boyd. The pressure they endured and efforts they felt forced to undertake because of their father is evident to all who have been involved in this case. There is no effort here to diminish those facts. However, it must be said that Zak and Dylan were intrinsically woven in to Daniel Boyd's "corrupted ideology" and partook in many of his efforts to engage in and/or promote violence. Regardless of the Boyd sons' current beliefs and remorse, the audio and video surveillance in this case speaks plainly about their role in this organization. The words spoken by the sons tell graphically what they thought and what they planned. Additionally, the Boyd sons were well trained in weapon use and frequently carried weapons on their person, significantly more so than Omar.

The length of time these two young men were involved in the purported conspiracy has to be discussed. While Government contends to insist Omar's Facebook chats with Yaghi in 2006 (when he was only 19 years old) had some secretive motive, Omar was simply communicating with his best friend while he was out of the country or that Omar was encouraging Yaghi to participate in terrorist activity. To this date, no direct evidence has been produced to suggest Yaghi's 2006 trip was anything more than a trip out of the country. Omar met Daniel Boyd in 2007. Omar disassociated with Daniel Boyd in 2007. That is the length of time of Omar's involvement in this matter. Zak and Dylan's involvement began at some point in late 2007 or 2008 and certainly continued up through their arrest in this case. Length of involvement is a factor that should be considered by this Court in determining Omar's minimal role and fashioning a sentence that will not create an unwarranted disparity in sentences between Omar's sentence and that of Zak and Dylan Boyd.

At Dylan Boyd's sentencing, the Court acknowledged Dylan's efforts to "challenge" his father. Omar submits that while he may not have challenged Daniel Boyd, he took the right steps to disassociate himself from Daniel Boyd. Omar may have fallen victim to Boyd's early rhetoric which was by all accounts much more benign in 2007. Boyd preyed on young Muslim youth and Omar was at a point in his life where he sought guidance. On some levels, Omar sought to rebel against the strict beliefs of his parents. Daniel Boyd appeared at an ideal time, when Omar was vulnerable and seeking guidance. However, Omar did not continue a relationship with Boyd. The evidence in this case showed that Omar met Boyd in early 2007 and did not associate with Boyd after the Summer of 2007. Their acquaintance was less than six months and that was well before Daniel Boyd began his serious downward spiral in to what he characterized as a "corrupt ideology." If Dylan receives credit for challenging Boyd, then Omar requests the Court consider his limited and narrow relationship with Boyd.

The Court credited Dylan for being "not as involved as others in the crime." While Hassan does not disagree with the Court's findings, Hassan respectfully submits that if the Court considered Dylan's minimal role in fashioning his sentence, Hassan believes the Court must take note of Omar's minimal role as compared to Dylan, Zak and all other members of the Boyd conspriacy. Hassan's minimal role is evident in the filings before the Court, the PSR and most importantly the testimony this Court heard at trial. Omar respectfully submits that there are many mitigating factors in which this Court should consider in order to avoid unwarranted disparities in sentences not only this case, but also other similar cases that will be brought to the Court's attention.

REQUEST FOR A MINIMAL FINE

Hassan has no assets. Should the Court impose additional active time, Omar hopes to work in the Bureau of Prisons System, although such income will surely be nominal. Upon his release, Omar will return to his family, finish his education and work toward a career. His prospects for satisfying a fine are uncertain at best. While Omar understands the Court's potential desire to assess a fine, he respectfully requests the Court consider his current situation and the time it will take for him to become gainfully employed upon release. Additionally, Omar asks the Court to take into consideration the amounts of fines assessed against Zak and Dylan Boyd: $3,000.00 and $1,000.00 respectively.

CONCLUSION

As noted above, at least 100 character letters we tendered to the Court on behalf of Omar Hassan. The contents of each letter cannot be included here. However, it would be a tragedy to not mention the words of these people who took the time to express their support of Omar. Ahmed Abrahim told it best,

> When we were younger, Omar was known to have a vast collection of all the latest Nintendo games and I would always be excited to go to his house to spend my time with him and play with his video games. I remember there was one summer when I was moving to a different part of the city, and I would not be able to come play at his house and play his games anymore. He left me with a parting gift. He basically took every single of his 20 to 30 games and the Nintendo system itself, placed it in a large trash bag and gave it to me.

We may not be playing video games here now, but to a young boy, a gaming system means everything. And even then, Omar considered others before he considered his own pleasure. We respectfully submit that events like that are more telling of who Omar is than much of what has been brought forward in this Court.

Omar's shortcomings are transparent now. It is easy to see where he wrongly associated and used poor judgment and said stupid things. The trial was a public display of his poor choices and juvenile behavior. In many ways, Omar was cursed to be born to a conservative and devote Islamic family living in a westernized and fast-moving society. The balance between the two is difficult. Omar's faith is central to his life, but enjoying his youth and finding his way has been tempting. Many times he took the road less traveled, but before the Court today, he is more strong in his faith, grateful and loyal to his family and committed to his future. Omar has many skills, great support and an incredible prospect to be a productive and patriotic member of society. Omar has much to make up for once he is released. He looks forward to an opportunity to prove how much he has to offer this great country.

Omar respectfully submits that a sentence below the Sentencing Guideline range is in line with the sentencing template of 18 U.S.C. § 3553(a) and *Kimbrough*, that is to fashion a sentence "'sufficient, but not greater than necessary,' to accomplish the goals of sentencing." *Kimbrough*, 128 S. Ct. at 570, 169 L. Ed. 2d at 462 (2007). In light of all the factors outlined above, Hassan respectfully asks that this Court fashion a much more reasonable sentence than that suggested by the calculations set forth in the Presentence Report.

Respectfully submitted, this the 11th day of January, 2012.

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/s R. Daniel Boyce

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion was filed with the Clerk of Court for the Eastern District of North Carolina and served on counsel of record via electronic transmission as follows:

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This the 11th day of January, 2012.

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